No. 379.

IN THE

SUPREME COURT OF THE UNITED STATES.

PHILIP SHARE, IRVIN GORDON and JAMES TAMER,
Petitioners,

v.

UNITED STATES OF AMERICA.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

PETITION FOR REHEARING.

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PETITION FOR REHEARING.

Petitioners pray that this Court grant them a rehearing of its decision of November 13, 1961, denying their petition for a writ of certiorari for the following reasons:

REASONS FOR GRANTING A REHEARING.

1. The Second Circuit in the recent decision of **U. S. v. Vita,** 294 F. 2d 524, 527, decided August 28, 1961, interprets **Marshal v. U. S.,** 360 U. S. 310, 79 S. Ct. 1171, as requiring that any juror be removed if he has read prejudicial newspaper publicity. In the instant case practically the entire panel had read publicity about the case. Much of the publicity was highly prejudicial, reciting prior convictions, etc. of the defendants. Since no separate or indi-

vidual examination of the jurors was made, the Court avoided eliciting their knowledge, but practically all of them had read articles.

2. We did not present in our petition for a writ of certiorari the following two substantial grounds available to petitioners:

A. The petitioners were charged in each count of the indictment with evading a tax imposed on a partnership consisting of the eight defendants. The District Court, over objection (D. A. 1448-1450; 1559-1561; 1570) charged the jury in Instruction No. 35 that it could convict the defendants if they found the partnership to consist of two or more defendants (D. A. 1540-1543). This was a variance from the indictment. **Stirone v. U. S.**, 361 U. S. 212.

B. The Government called nine witnesses whom it knew would refuse to testify on the ground of self-incrimination (D. A. 878, 885, 898, 932, 934-935, 946-948, 951-952, 957, 963-964, 966, 997-999, 1000, 1025-1027). This prejudiced the defendants in the eyes of the jury, since it was shown that these witnesses had dealt with the defendants (D. A. 1212-1217, 1220-1223, 1227, 1283-1284). Cf. **Grunewald v. U. S.**, 353 U. S. 391.

CONCLUSION.

For the reasons set forth above it is respectfully urged that a rehearing be granted.

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We hereby certify that this petition is presented in good faith and not for delay and is restricted to substantial grounds arising from intervening circumstances or not previously presented in the petition for a writ of certiorari.

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